

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: **Forti, W. M. et al.**

Application No.: **Not yet determined**

Filed: **Concurrently filed herewith**

For: **Wiggle Flyer**

**Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450**

**PETITION TO MAKE SPECIAL FOR NEW APPLICATION  
UNDER 37 C.F.R. § 1.102(d) and M.P.E.P. § 708.02, VIII**

**A) Petition**

Applicant hereby petitions to make this new application special and submits the fee set forth in 37 C.F.R. 1.17(h). Please charge the amount of \$130.00 to cover the cost of filing this petition to our deposit account number 502191.

**B) Claims**

All the claims in this case are directed to a single invention. If the Office determines that all the claims presented are not obviously directed to a single invention, then applicant will make an election without traverse as a prerequisite to the grant of special status.

**C) Search**

A substantial pre-examination search has been carried out by the applicant and the keywords, databases, and searched classes are as follows:

1. Full patent spec. (tail OR member OR element) near3 (spiral OR spring OR helical OR wound) AND toy AND ball AND (throw\*)

Databases USG USA EPA EPB WO JP DEG DEA DET DEU GBA FRA

Years: 1836-2004

2. Full patent spec. (tail OR member OR element) near3 (spiral OR spring OR helical OR wound) AND toy AND ball AND (erratic OR irregular OR unpredictable OR wiggle)

Databases USG USA EPA EPB WO JP DEG DEA DET DEU GBA FRA  
Years 1836-2004

3. Full patent spec. (tail OR member OR element) near3 (spiral OR spring OR helical OR wound) AND toy AND ball

Databases USG USA EPA EPB WO JP DEG DEA DET DEU GBA FRA  
Years 1836-2004

4. Full patent spec. (tail OR member OR element) near3 (spiral OR spring OR helical OR wound) AND (toy OR Game) AND (ball near5 (spiral OR spring OR helical OR wound))

Databases USG USA EPA EPB WO JP DEG DEA DET DEU GBA FRA  
Years 1836-2004

5. Full patent spec. (tail OR streamer OR member OR element) near3 (spiral OR spring OR helical OR wound) AND (toy OR Game) AND (ball near5 (spiral OR spring OR helical OR wound))

Databases USG USA EPA EPB WO JP DEG DEA DET DEU GBA FRA  
Years 1836-2004

6. Full patent spec. (tail OR streamer OR member OR element) near5 (spiral OR spring OR helical OR wound) AND (toy OR Game) AND ball

Databases USG USA EPA EPB WO JP DEG DEA DET DEU GBA FRA  
Years 1836-2004

7. Full patent spec. ball near5 (spiral OR spring OR helical OR wound) AND (toy OR Game)

Databases USG USA EPA EPB WO JP DEG DEA DET DEU GBA FRA  
Years 1836-2004

8. Full patent spec. ball near5 (spiral OR spring OR helical OR wound)

Databases USG USA EPA EPB WO JP DEG DEA DET DEU GBA FRA  
Years 1836-2004

9. Full patent spec. toy and throw\* and (spiral near3 fly\*)

Databases USG USA EPA EPB WO JP DEG DEA DET DEU GBA FRA

Years 1836-2004

10. Full patent spec. toy and (spiral or helix or helical) US or Int'l Class: A63B

Databases USG USA EPA EPB WO JP DEG DEA DET DEU GBA FRA

Years 1836-2004

11. Full patent spec. toy and (spiral or helix or helical) and throw\* US or Int'l Class: A63B

Databases USG USA EPA EPB WO JP DEG DEA DET DEU GBA FRA

Years 1836-2004

12. Full patent spec. toy and (coil) US or Int'l Class: A63

Databases USG USA EPA EPB WO JP DEG DEA DET DEU GBA FRA

Years 1836-2004

13. Manual search of US patent classes 446, 463, and 473 (particularly subclasses 575 and 614)

#### **D) Copies Of The References**

All references closely related to the subject matter are also listed in the attached IDS.

#### **E) Detailed Discussion Of The References**

##### **U.S. App. No. 2002/0197933 (Shea)**

Shea discloses a small coil sized and dimensioned to be played with by a cat. Shea expressly limits the size of the coil to less than 2 inches in length and 1 inch in diameter to allow manipulation of the coil by a cat.

All of the present claims expressly require "...a head portion that is fixedly coupled to a spiral-shaped tail...", and that the "...spiral-shaped tail has a configuration effective to impart a motion to the head portion that is non-linear relative to the path of flight..."

***Shea fails to teach a head portion.*** Therefore, the presently pending claims are not anticipated by Shea. There is also no suggestion or motivation to add a head portion to the toy, let alone that the toy is thrown into a flight path in which the tail imparts a non-linear motion to the head portion. On the contrary, a ***toy that rolls along the floor due to cat's play is inconsistent with a flying toy as defined in the application*** (see e.g., page 3, lines 20 *et seq.*). Moreover, a head portion on Shea's would likely impede the rolling motion or jumping desired by Shea,

thereby *further teaching away* from the subject matter as presently claimed. Therefore, and at least for these reasons, the presently pending claims should not be held obvious over Shea.

**U.S. Pat. No. 6,554,684 (Marlin)**

Marlin discloses a lasso having a coil portion and a handle portion, wherein the handle portion is held by a user, while the coil portion is flung towards a target.

All of the present claims expressly require "...a flying toy...", in which a "...spiral-shaped tail curves around the longitudinal axis to a degree effective to impart rotation of the tail about the longitudinal axis during flight..."

Clearly, *Marlin's lasso is not a flying toy as defined in the present specification*. Thus, the present claims are not anticipated by Marlin. On the contrary, if the lasso is released from a user's hand, *Marlin's toy would be inoperable for its intended purpose* as there is no retaining force that would provide the snapping motion required for target engagement. Therefore, and at least for these reasons, the presently pending claims should not be held obvious over Marlin.

**U.S. Pat. No. 6,120,398 (Myers)**

Myers discloses a football with a spiral like tail that improved flight characteristics of a pass with the football.

All of the present claims expressly require that the "...spiral-shaped tail has a...configuration other than a screw..."

Myers *fails to teach* a flying toy with a tail other than a screw. Thus, the presently pending claims should not be held anticipated by Myers. Indeed, as the *head portion in Myers' toy is coaxial with a screw-like tail*, the only motion imparted to the head portion is a rotation along the path of flight to stabilize flight, but not to impart a wiggling flight in which the tail rotates about a longitudinal axis. Thus, Myers is entirely inconsistent with the presently pending claims. Clearly, *Myers teaches away from the claimed subject matter*. Therefore, and at least for these reasons, the presently pending claims should not be held obvious over Myers.

**U.S. Pat. No. 5,727,984 (Lin)**

Lin discloses a rolling toy in which a coil portion (covered by a ornamental cloth) is flexibly and rotatably attached to a ball. When the ball is rolled over the floor, the coil extends and chases the ball as the coil recoils.

All of the present claims expressly require "...a flying toy...", in which "...the spiral-shaped tail comprises a material that maintains a spiral shape of the tail during flight", and in which the "...a head portion...is fixedly coupled to a spiral-shaped tail..."

Clearly, *Lin fails to teach a flying toy*. The presently pending claims are therefore not anticipated. Moreover, there is also no suggestion or motivation in the Lin reference that would motivate a person of ordinary skill in the art to modify Lin's toy such as to arrive at the presently claimed subject matter. On the contrary, *if Lin's coil would be modified* to maintain the spiral shape (see definition in the present specification), *it would be inoperable for its intended purpose* (i.e., to recoil in an amount effective to chase the head portion). Furthermore, the head portion in Lin's toy is rotatably coupled to the tail, which teaches against the subject matter as presently claimed. Consequently, Lin teaches away, if not even against the presently pending claims.

**U.S. Pat. No. 3,428,321 (Manning)**

Manning discloses an arrow with a spiraled fletching to improve quality of flight (...imparts very smooth, non-wobbling flight) of the arrow.

All of the present claims expressly require that the "...spiral-shaped tail has a longitudinal axis and a configuration other than a screw..."

Manning *fails to teach* a flying toy in which the tail has a configuration *other than a screw*. Thus, the presently pending claims should not be held anticipated by Manning. On the contrary, Manning's fletching is attached to the arrow, which coincides with the longitudinal axis, which is entirely inconsistent with the presently pending claims. Thus, *Manning teaches away from the claimed subject matter*. Therefore, and at least for these reasons, the presently pending claims should not be held obvious over Manning.

Date: 5/5/04



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